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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 374

TICONIC NATIONAL BANK, PEOPLES-TICONIC NATIONAL BANK, ET AL., PETITIONERS,

vs.

LOTTIE F. SPRAGUE AND MARGARET DAVIS SPRAGUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 1, 1937.

CERTIORARI GRANTED OCTOBER 18, 1937.

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Captions omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF MAINE, SOUTHERN DIVISION

No. 990 Equity.

LOTTIE F. SPRAGUE and MARGARET DAVIS SPRAGUE

vs.

TICONIC NATIONAL BANK, PEOPLES-TICONIC NATIONAL BANK and ARTHUR G. PICHER, as He is Receiver of Both Said Banks

[fol. 2] BILL OF COMPLAINT—Filed July 29, 1935

Lottie F. Sprague of Northport, Maine, and Margaret Davis Sprague of Monson, Maine, complain against the Ticonic National Bank of Waterville, Maine, the Peoples-Ticonic National Bank of Waterville, Maine, and Arthur G. Picher of Waterville, Maine, as he is receiver of both said banks and says:

First. The said Ticonic National Bank was duly organized under the national banking act in 1865 and has ever since continued to be and now is a national banking association.

The said Peoples-Ticonic National Bank was duly organized under the national banking act in 1865 and has ever since continued to be and now is a national banking association.

Second. December 30, 1926, the Federal Reserve Board granted to the Ticonic National Bank a special permit to act in fiduciary capacities in accordance with the provisions of Section 11 (k) of the Federal Reserve Act.

Third. Following said grant of authority on said 30th of December, 1926, the directors of said Ticonic National Bank enacted certain by-laws establishing a separate trust department in the bank and providing for its management and the safety of funds entrusted to its care. A copy of said by-laws marked Exhibit A is hereto annexed and made a part hereof.

Fourth. March 28, 1931, the plaintiff Lottie F. Sprague delivered and entrusted to said trust department of said Ticonic National Bank five thousand twenty-two dollars and eighteen cents to establish a trust for the benefit of plaintiff Margaret Davis Sprague under an agreement, copy of which marked Exhibit B is hereto annexed and made a part hereof.

[fol. 3] Fifth. From time to time subsequent to December 20, 1926, bonds were segregated by said Ticonic National Bank and held as security for performance of its trust obligations until it so held the bonds shown by the following list:

Title of issue	Rate	Par value
Berlin City Electric Co. 1959	6½	$ 9,000
Central Power & Light Co. 1956	5	15,000
Indiana Electric Corp. 1953	6½	5,000
International Paper Co. 1947	5	12,000
International Tel. & Tel. Co. 1952	4½	5,000
Kentucky Utilities Co. 1948	6½	10,000
Kingdom of Denmark 1942	6	20,000
Michigan Gas & Elec. 1943	6	10,000
Missouri Pac. R. R. 1980	5	20,000
Oklahoma Natural Gas Corp. 1948	5	10,000
Penn Ohio Edison Co. 1950	6	10,000
Peoria & Pekin Union Ry. 1974	5½	10,000
Portland Terminal Co. 1961	5	25,000
Texarkana & Fort Smith Ry. 1950	5½	10,000
U. S. Rubber Company 1947	5	10,000
Wabash R. R. 1957	5½	10,000
S. D. Warren Co. 1945	6	10,000

Sixth. January 13, 1931, the annual meeting of stockholders of said Ticonic National Bank was held and at said meeting Mr. Charles W. Vigue and Mr. Carroll N. Perkins, both of whom were directors of the Peoples National Bank and also respectively president and attorney thereof, were elected to the same positions in the Ticonic National Bank and ever after continued to serve in those positions in both banks and Mr. Vigue became the active executive head of both banks.

Seventh. August 3, 1931, by contract authorized by votes of the directors of each bank and executed by the proper

officers of each the Peoples National Bank bought all the assets and assumed all the liabilities of the Ticonic National Bank and plaintiffs say that the assets included the bonds listed in paragraph fifth above and that the liabilities in-
[fol. 4] cluded the trust obligation set out in paragraph fourth. And plaintiffs further allege that all the directors and officers of said Peoples National Bank had full and complete notice and knowledge of all the terms, conditions, provisions and obligations arising under and from said trust agreement of March 28, 1931, and under and from the by-laws of said Ticonic National Bank and under and from the segregation of securities as set forth in paragraph fifth.

Eighth. And plaintiffs say that on said third day of August, 1931, said Peoples National Bank appropriated the word Ticonic as a part of its own name and is now called and known by the name of Peoples-Ticonic National Bank and that it is the defendant so named in this bill of complaint.

Ninth. From and after said third day of August, 1931, said Ticonic National Bank ceased active business as a bank.

Tenth. March 4, 1933, the Peoples-Ticonic National Bank was closed by order of the President of the United States.

March 25, 1933, Charles W. Vigue was appointed conservator of said bank and received all its assets including the bonds listed in paragraph fifth.

November 6, 1933, Arthur G. Picher was appointed receiver of said bank and took over all of its assets from said Charles W. Vigue including the bonds listed in paragraph fifth.

June 28, 1934, the same Arthur G. Picher was appointed receiver of the Ticonic National Bank.

Wherefore plaintiffs pray:

1. That this their bill may be sustained.

2. That defendants may be held to answer.

3. That the trust declared in said agreement of March 28, 1931, may be declared valid and binding.

4. That the securities listed in paragraph fifth may be holden as security for performance of said trust agreement.

5. That plaintiffs may have such other and further relief as may be necessary.

[fol. 5] The plaintiffs further pray this Honorable Court to issue its writ of subpœna, in due form of law and according to the course and practice of the Court, directed to the said Ticonic National Bank, the said Peoples-Ticonic National Bank and the said Arthur G. Picher as he is receiver of both said banks, defendants as aforesaid, commanding them at a certain day and under a certain penalty to be therein specified to appear before this Honorable Court to answer all and singular the matters and things hereinbefore set forth and complained of and to stand by and abide and perform all the orders and decrees of the Court herein.

Lottie F. Sprague, Margaret Davis Sprague, by Harvey D. Eaton, Their Attorney. Harvey D. Eaton, Solicitor for Plaintiffs.

EXHIBIT "A" TO COMPLAINT

December 30, 1926.

A meeting of the Directors was held this day, the following being present: Mr. Boutelle, Mr. Brown, Mr. Daggett, Mr. Leighton, Mr. Taylor and Mr. Ware:

The following resolution was offered, seconded and duly adopted:

Whereas the Federal Reserve Board has by special permit granted to this national bank the right to act in fiduciary capacities under the provisions of Section 11 (k) of the Federal Reserve Act.

1. Separate Department

Now, Therefore, Be It Resolved that pursuant to the provisions of the Regulations of the Federal Reserve Board there is hereby established a separate trust department of the Ticonic National Bank which shall be under the management of George K. Boutelle, Trust Officer, and Cyril M. Joly, Assistant Trust Officer.

[fol. 6] 2. Duties of Trust Officer

Be It Further Resolved that (a) The duties of said Trust Officers, shall be to manage, supervise and direct the activi-

ties of the Trust Department of The Ticonic National Bank, acting in fiduciary capacities authorized under the permit granted by the Federal Reserve Board; to do and perform all acts and things whatsoever necessary or proper to be done or performed in carrying on the business of said Trust Department in accordance with the provisions of the State and Federal laws and Regulations of the Federal Reserve Board, and in general to perform all acts incident to the carrying on of said business, or prescribed by the Board of Directors of said bank. (b) Opinion of counsel, where necessary, shall be obtained and filed in all important matters pertaining to trusts, both individual and corporate.

3. Books and Records

Be It Further Resolved that adequate books and records shall be installed in the Trust Department for all fiduciary activities, both individual and corporate, and such books and records shall be kept separate and distinct from other books and records of the bank. All accounts opened shall be so kept as to enable the bank at any time to furnish information or reports required by the Federal or State authorities, and such books and records shall be open to the inspection of such authorities.

There shall be maintained in the trust department a file containing (a) Original instruments creating each trust or properly authenticated copies thereof, (b) Properly receipted vouchers evidencing payments under each trust, and (c) Properly evidenced reports to courts, or others, accounting for trusts.

4. Securities and Investments

Be It Further Resolved, that the trust securities and investments held in each trust shall be kept separate and distinct from the securities owned by the bank and separate and distinct one from another, and shall be placed in the joint custody of Miss Myrtle L. Jordan and Mr. Lorimer H. Dixon, who are employees of the bank or their successors
[fol. 7] hereafter designated by the Board of Directors, and that such custodians shall at all times be adequately bonded. The securities shall be so kept as to make it impossible for any one custodian to have access to the trust securities or investments without the presence of one of the other custodians named with him.

5. Deposit in Commercial Department of Trust Funds Awaiting Investment or Distribution

Be It Further Resolved that whenever funds received or held in the trust department awaiting investment or distribution, are deposited in the Commercial Department to the credit of the trust department, the commercial department shall first deliver to the trust department, as collateral security, United States Bonds or other marketable securities owned by the bank, which collateral security shall at all times be at least equal in market value to the amount of the funds so deposited.

6. Investment of Trust Funds

Private Trusts

Be It Further Resolved that (a) Funds held in trust must be invested in strict accordance with the terms of the will, deed or other instrument creating the trust. Where the instrument creating the trust contains provisions authorizing the bank, its officers, or its directors to exercise their discretion in the matter of investments, funds held in trust shall be invested only in those classes of securities which are approved by the directors of the bank.

Where the instrument creating the trust does not specify the character or class of investments to be made and does not expressly vest in the bank, its officers or its directors a discretion in the matter of investments, funds held in trust shall be invested in any securities in which corporate or individual fiduciaries in the State in which this bank is located may lawfully invest.

Court Trusts

(b) Except as hereinafter provided, where this national bank acts as executor, administrator, or in any other fiduciary capacity, under appointment by a court of com- [fol. 8] petent jurisdiction, all investments shall be made under an order of that court, and copies of all such orders shall be filed and preserved with the records of the trust department of this bank.

If the court by general order vests a discretion in this national bank to invest funds held in trust, or if under the laws of the State in which this bank is located corporate fiduciaries appointed by the court are permitted to exercise such discretion, this bank so appointed shall invest such

funds in any securities which corporate or individual fiduciaries in this State may lawfully invest.

(c) All investments of trust funds shall have the approval of this Board of Directors, or a committee appointed for that purpose, and such approval shall be recorded in the minutes.

(d) No trust funds shall be loaned to any director, officer or employee of this bank in violation of the prohibition contained in Section 11 (k) of the Federal Reserve Act.

7. Examining Committee

Be It Further Resolved that a committee from the Board of Directors of this bank shall in the months of January and July of each year make or supervise the making of a thorough and complete audit of all records of the trust department, and shall make a complete and careful examination of all securities held by the trust department. Such committee shall make a report in writing to the full Board of Directors covering such examination and the report of such examination shall become a part of the minutes of the Board of Directors of this bank.

EXHIBIT "B" TO COMPLAINT

This Indenture made this twenty-eighth day of March, 1931, between Lottie F. Sprague, now residing in the City of Waterville, Maine (hereinafter called the "Grantor"), party of the first part, and Ticonic National Bank of Waterville, Maine, a national banking corporation organized and existing under the laws of the United States (hereinafter called the "Trustee"), party of the second part:

[fol. 9] Witnesseth:

That the Grantor in consideration of the sum of One Dollar ($1.) to her in hand paid by the Trustee, the receipt whereof is hereby acknowledged, and of the covenants hereinafter contained, hath deposited, transferred and set over, and by these presents doth deposit, transfer and set over unto the Trustee the sum of $5022.18, the receipt of which is hereby acknowledged by the Trustee.

To Have and to Hold the said money to the said Trustee, its successors or assigns upon the following express trust

and conditions and with the powers and limitations hereinafter conferred and set forth, that is to say:

1. The Trustee is expressly authorized and empowered to invest and reinvest the sum, accumulations, and any parts thereof, in such bonds or securities as it in its discretion may determine, and whether or not the same be authorized by law for the investment of trust funds, reserving uninvested at least one thousand dollars which the Trustee is expressly authorized and empowered to deposit in its savings department at its usual and existing rates of interest,

2. The Trustee shall collect and receive the income, interest and dividends therefrom, and on the first banking day of each month beginning with April 1, 1931, the Trustee shall pay the sum of fifty dollars from said fund and accumulations, to Margaret Davis Sprague, said payments to continue until said sum and accumulations are exhausted or until the death or remarriage of said Margaret Davis Sprague, which- event occurs first.

3. Upon the death or remarriage of said Margaret Davis Sprague, then the Trustee shall pay on the first banking day of each month, from said fund and accumulations the sum of fifty dollars, to any child of Margaret Davis Sprague and the late Alden Cecil Sprague that may be then living, said payments to continue until said sum and accumulation are exhausted or until the death of said child whichever event occurs first.

[fol. 10] 4. The Trustee hereunder shall be entitled to receive reimbursements for all expenses incurred by it in connection with said trust and as its compensation five per cent. of the income annually and a distributive fee upon the termination of the Trust of two per cent. of the balance then in said trust fund.

5. Upon the death of or remarriage of Margaret Davis Sprague and the death of any child of Alden Cecil Sprague born to Margaret Davis Sprague this trust shall terminate and end.

6. The Grantor hereby expressly reserves and retains the right at any time by a notice in writing, signed and acknowledged by her and filed with the Trustee, to revoke, cancel and annul this indenture and the trust hereby created in

whole or in part and to resume possession of the trust funds free and discharged from this indenture and the trust created hereby and also reserves and retains the right at any time and from time to time by a notice in writing, signed by her and filed with the Trustee, to alter, amend and modify this agreement in any and every respect, and in the event of the revocation by said Grantor under the provisions of this paragraph the trustee shall be entitled to a revocation fee of $25.00 instead of the distributive fee of two per cent. as provided by paragraph Four of this agreement.

7. The Grantor hereby expressly reserves and retains the right at any time by direction in writing to the Trustee, signed and acknowledged by her, to increase the amount of any one or more of the monthly payments herein provided.

8. Upon the termination of this trust in any manner before the sum and accumulations are paid out by the Trustee under the provisions hereof, then any balance shall be turned back to the Grantor, her heirs and assigns.

9. The exercise of all rights retained, reserved, and existing in, the Grantor, shall upon the death of the Grantor be exercised by her son, Richard L. Sprague.

10. It is expressly understood that the Trustee shall have the right at any time to resign by giving a written notice of [fol. 11] its resignation to the Grantor, if living, and if she be not living, then to Richard L. Sprague, and if he be not living to the then beneficiary of the trust.

11. The Trustee by joining in the execution of this agreement hereby signifies its acceptance of the trust.

In Witness Whereof the said parties have hereunto set their hands and seals the day and year first above written.

Lottie F. Sprague (Seal), Ticonic National Bank (Ticonic Bank Seal), by George K. Boutelle, Trust Officer.

Duly sworn to by Lottie F. Sprague and George K. Boutelle. Jurats omitted in printing.

[fol. 12] IN UNITED STATES DISTRICT COURT

SUBPŒNA WITH ACKNOWLEDGMENT OF SERVICE THEREON

The President of the United States of America to Ticonic National Bank of Waterville, Maine, the Peoples-Ticonic National Bank of Waterville, Maine, and Arthur G. Picher of Waterville, Maine, as he is receiver of both said banks, Greeting:

You are Hereby Commanded that all excuses and delays set aside you be and appear within twenty days after the service of this subpœna at the Clerk's office of the United States District Court for the District of Maine, at Portland, to answer unto the bill of complaint of Lottie F. Sprague of Northport, Maine, and Margaret Davis Sprague of Monson, Maine, in said Court exhibited against you. Hereof you are not to fail at your peril, and have you then and there this writ.

Witness the Honorable John A. Peters, United States District Judge at Portland, this 30th day of July, A. D. 1935.

John F. Knowlton, Clerk. (Seal.)

Memorandum

The Defendants in this case are required to file their answers or other defenses in the Clerk's office of said Court, on or before the twentieth day after service of this writ, excluding the day thereof; otherwise the Bill may be taken pro confesso.

[fol. 13] c7—1538

Return on Service of Writ

UNITED STATES OF AMERICA,
District of Maine, ss:

I hereby certify and return, that on the 2nd day of August, 1935, I received the within Subpœna in Equity, and hereby acknowledge due, legal and sufficient service thereof.

F. Harold Dubord, Attorney for all said Defendants.

IN UNITED STATES DISTRICT COURT

JOINT ANSWER OF DEFENDANTS—Filed August 22, 1935

To the Honorable Judge of the District Court of the United States, for the District of Maine:

The joint Answer of the Ticonic National Bank of Waterville, Maine, the Peoples-Ticonic National Bank of Waterville, Maine and Arthur G. Picher of Waterville, Maine, in his capacity as Receiver of both of said banks, defendants in the above entitled cause, to the Plaintiff's Bill of Complaint.

1. The defendants admit the allegations in Paragraph One of Plaintiffs' Bill.

2. The defendants admit the allegations in Paragraph Two of Plaintiffs' Bill.

3. The defendants admit the allegations in Paragraph Three of Plaintiffs' Bill.

4. The defendants admit the allegations in Paragraph Four of Plaintiffs' Bill.

5. The defendants deny the allegations in Paragraph Five of Plaintiffs' Bill.

[fol. 14] 6. The defendants admit the allegations in Paragraph Six of Plaintiffs' Bill.

7. The defendants admit that by contract dated August 3rd, 1931, said contract being authorized by vote of the directors of each bank, and executed by the proper officers of each bank, that the Peoples National Bank bought all of the assets and assumed some of the liabilities of the Ticonic National Bank, but the defendants deny that the assets included the bonds listed in Paragraph Five of Plaintiffs' Bill, with the exception of Kingdom of Denmark bonds of the par value of $20,000, and that the liabilities included the alleged trust obligation set out in Paragraph Four of Plaintiffs' Bill. The defendants deny all of the other allegations in Paragraph Seven of Plaintiffs' Bill.

8. The defendants admit the allegations in Paragraph Eight of Plaintiffs' Bill.

9. The defendants admit that from and after August 3rd, 1931, the Ticonic National Bank ceased active business as a

bank, but by way of further Answer, the defendants aver that the directors of the Ticonic National Bank continued to hold meetings as such directors after August 3rd, 1931, and that the officers of the Ticonic National Bank continued to administer the alleged trust created by and between the Ticonic National Bank, and the plaintiff, Lottie F. Sprague.

10. The defendants admit the allegations in Paragraph Ten of Plaintiffs' Bill.

11. By way of further Answer, the defendants aver that on March 28, 1931, the plaintiff, Lottie F. Sprague, conveyed to the Ticonic National Bank the sum of $5,022.18 in accordance with a certain agreement referred to in Paragraph Four of Plaintiffs' Bill, copy of which agreement marked "Exhibit B" is attached to Plaintiffs' Bill. The defendants further aver that when the Ticonic National Bank and the Peoples National Bank consolidated by contract dated August 3rd, 1931, no reference was made in the contract of consolidation, or in any other manner relative to the trust al- [fol. 15] leged to have been created by the plaintiffs or relative to any other private trust in which the Ticonic National Bank was the trustee, and that there was no agreement of any kind made whereby the Peoples National Bank, subsequently known as the Peoples-Ticonic National Bank, was substituted as trustee for the Ticonic National Bank. The defendants further aver that on and after August 3rd, 1931, the officials of the Ticonic National Bank continued to exercise supervision of the trust alleged by the plaintiff, and of all other trust accounts held by the Ticonic National Bank. That subsequent to the consolidation, the officers of the Ticonic National Bank deposited in the Peoples-Ticonic National Bank the aggregate of all funds held by the Ticonic National Bank by virtue of private trust agreements, including the balance in the trust created by the plaintiff, Lottie F. Sprague, in an ordinary commercial checking account in the Peoples-Ticonic National Bank; that said deposit in the Peoples-Ticonic National Bank in its regular commercial checking account, including the balance in the Lottie F. Sprague account, was in no way secured, and that any attempt to secure said deposit by the officers of the Peoples-Ticonic National Bank would have been invalid and void. That since the execution of the agreement of March 28th, 1931, there has been paid various sums to the beneficiaries named by the plaintiff, Lottie F. Sprague, so that there now

remains on deposit in the Peoples-Ticonic National Bank as a balance in the said Lottie F. Sprague account, as of August 19th, 1935, the sum of $3,649.65; that Paragraph One of the agreement of March 28th 1931, expressly authorizes the trustee to reserve uninvested the sum of at least $1000 and to deposit said sum in its savings department at its usual and existing rates of interest, and as a result thereof, in no event was there any other relationship created between Lottie F. Sprague and the Ticonic National Bank, in so far as the amount of $1000. is concerned, except that of debtor and creditor. And the defendants further aver that said deposit is in law and in equity only a general deposit, and that the plaintiffs are not entitled to priority, but are entitled only to share as general creditors of the Peoples-Ticonic National Bank in such balance as was on deposit on March 4th, 1933.

[fol. 16] Wherefore, the defendants pray that the Plaintiffs' Bill may be dismissed with costs to the defendants in this behalf wrongfully sustained.

Ticonic National Bank of Waterville, Maine, Peoples-Ticonic National Bank of Waterville, Maine, Arthur G. Picher, Receiver of Both Banks, by F. Harold Dubord, Their Attorney. F. Harold Dubord, Solicitor for Defendants.

In United States District Court, District of Maine
(Southern Division)

No. 990 Equity

Lottie F. Sprague et al.

vs.

Ticonic National Bank et als.

Before Peters, J.

In Chambers

Statement of Evidence

Portland, Maine, 21st February, 1936.

The following matter came on for hearing before Hon. John A. Peters, U. S. District Judge, in chambers, at the

U. S. Courthouse, Portland, Maine, by agreement, beginning at 2:15 p. m., E. S. T.

Appearances.

For the Plaintiff: Harvey D. Eaton, Esq., Attorney at Law, Waterville, Maine.

For the Defendants: F. Harold Dubord, Esq., Attorney at Law, Waterville, Maine.

[fol. 17] COLLOQUY

Mr. Eaton: Now, if the Court please, Lottie F. Sprague is one of our good women up there, and a few years ago she had a son die whose life was insured for five thousand dollars, and he left a little boy—only a year or two old. Mrs. Sprague received——

The Court: Now all I need are the facts to make a record so I can make up my mind what the result is.

Mr. Sprague: Well, there is only one question between us. Everything in the first four paragraphs, I think, is admitted. Now under its by-laws the Ticonic Bank, at various times, segregated bonds as security for trusts——

The Court: Well, are you talking about this trust; or what?

Mr. Eaton: In general, for all trusts.

The Court: They are required to do that by law?

Mr. Eaton: Yes. And also their by-laws provided very carefully for the care and management of those securities; and particularly they set aside $20,000. Kingdom of Denmark bonds, which my brother and I are agreed are holden, if anything is holden, for security for this and all other trusts——

The Court: They set aside securities in amount sufficient to cover all the trusts that they had set up according to their books? Is that correct?

Mr. Eaton: That is correct. We will disagree upon the interpretation of the thing as we go along, but it is a fact that there were $20,000. of Kingdom of Denmark bonds segregated to protect uninvested funds in trust accounts in the Peoples-Ticonic National Bank.

The Court: If the funds were invested, that would be the protection——

Mr. Eaton: If they are properly invested of course.

Mr. Dubord: The by-laws themselves cover that. That it is uninvested funds.

(Court and counsel examine and read by-laws.)

* * * * * * *

The Court: Yes. But that doesn't cover invested funds.

Mr. Eaton: Funds held pending investment.

The Court: That is what I said. Of course if the funds had been invested they would no longer require protection. [fol. 18] Mr. Eaton: The point here is that they never invested a dollar. They held the whole of it in their commercial department.

The Court: This money wasn't invested, but was held—what does that by-law say, again?

Mr. Eaton: "Be it further resolved that whenever funds received or held in the trust department awaiting investment or distribution, are deposited in the commercial department to the credit of the trust department, the commercial department shall first deliver to the trust department, as collateral security, United States bonds or other marketable securities owned by the bank, which collateral security shall at all times be at least equal to the market value of the amount of the funds so deposited."

The Court: Were these funds deposited in the commercial department to the credit of the trust department?

Mr. Eaton: I don't know.

Mr. Dubord: I can tell you what happened, and we intend to.

Mr. Eaton: This money was received in March, 1931, and they simply entered it in the commercial department and never bought any security of any kind; and as I say——

The Court: Well, is this argument, or evidence, or what is it? You state facts here. Do you agree that that is so? It doesn't do me any good when those facts are stated, unless Mr. Dubord either agrees to it or the facts are proved.

Mr. Dubord: A lot of that is going into the record which shouldn't go in the record at all. I don't admit it in that form.

The Court: It has got to be either proved to me, or you have got to have a stipulation—admit it. In other words, in order to make a record you have got either to have evidence or a stipulation. There is no other way.

(Court and counsel confer, which, by direction of the Court, is not made a part of this record.)

* * * * * * *

Mr. Eaton: I think it appears from my brother's answer—at any rate it is admitted—that the bank received this money and as a matter of fact it didn't——

The Court: All right. Are you arguing, or what are you doing?

[fol. 19] Mr. Eaton: I was trying to give the Court an idea of what the case is.

The Court: I can see what the case is. Now I want evidence.

Mr. Dubord: I am willing to admit——

Mr. Eaton: I think the precise question isn't yet stated. Just a minute, please, and I will try to state it. Paragraph No. 1 of the indenture provides:

"The Trustee is expressly authorized and empowered to invest and reinvest the sum, accumulations and any parts thereof, in such bonds or securities as it in its discretion may determine, and whether or not the same be authorized by law for the investment of trust funds, reserving uninvested at least one thousand dollars which the Trustee is expressly authorized and empowered to deposit in its savings department at its usual and existing rates of interest."

Now, the question arises—the bank accepted this money and they bought no securities and made no investments or deposits in the savings department——

The Court: Do you agree to that? It is no use to tell me facts unless you prove them or the other side agrees to them.

Mr. Dubord: I agree that no bonds were bought.

The Court: Wouldn't it be better to produce what records you have here on the bank's side; and probably Mr. Eaton won't disagree with what your records show, and your records will probably show the whole story.

Mr. Dubord: Well, if he is done, I'll tell you what I am willing to stipulate.

Mr. Eaton: I would like to tell you our side of it.

The Court: Very well.

Mr. Eaton: Now, then, the trust in a general way is acknowledged, but my brother claims that as to that thousand dollars which they were allowed to deposit in their

savings department, that the present plaintiff is simply a general creditor——

The Court: As to that only?

Mr. Eaton: And that only.

Mr. Dubord: It seems to me that everything that has been [fol. 20] put into the record so far should be stricken out entirely. None of it is evidence. And we should start anew.

The Court: I think that may be true. Now you have some records showing when this fund was deposited, etc. Tell me what the records of the bank show about it. They will probably tell the whole story.

Stipulations as to Certain Facts

Stipulation

It is stipulated and agreed that the trust agreement attached to the bill as one of the exhibits was executed by and between the Ticonic National Bank and Lottie F. Sprague, and that, pursuant to the agreement the sum of $5,022.18 was turned over to the Ticonic National Bank or its trust officers.

And it is further stipulated and agreed that from the date when the money was paid over to the Ticonic National Bank, —to wit, March 28, 1931—down to the present time, various sums have been paid by the bank—the Ticonic National Bank—or its trust officers, to the beneficiaries of the trust, so that the amount on deposit in the so-called Sprague Trust at the present time is $3,649.65. Is that correct?

Mr. Eaton: So far as I know.

Mr. Dubord: It is further stipulated that the Ticonic National Bank segregated, for the purpose of securing the uninvested funds in all of its trusts, $20,000 of Kingdom of Denmark bonds.

It is further stipulated that that amount, and the price for which the bonds were subsequently sold, was in excess of the aggregate of all trust funds in the Ticonic National Bank.

It is stipulated that these Kingdom of Denmark bonds were subsequently sold by the Peoples-Ticonic National Bank for the amount of $20,722.66.

It is further stipulated that none of the funds in the alleged Sprague Trust were ever invested by the Ticonic National Bank in any security or otherwise; and that until the time of the consolidation of the Ticonic National Bank with the Peoples-Ticonic National Bank the funds deposited by virtue of this Sprague agreement were kept in a checking account in the commercial department of the Ticonic National Bank to the credit of the trust department of the Ticonic National Bank.

[fol. 21] The Court: Was that so from the beginning of the deposit?

STIPULATION

It is stipulated that such was the case from the time of the original deposit or turning over of the Sprague money to the Ticonic National Bank.

The Court: And up to the time of the receivership——

Mr. Dubord: I am going to come to that.

STIPULATION

It is stipulated that on August 3, 1931, an agreement was entered into by and between the Ticonic National Bank and the Peoples National Bank, whereby the two banks consolidated.

The Court (to Mr. Eaton): Do you agree? You are agreeing to all this, so far?

Mr. Eaton: I am agreeing to everything except the word "consolidate." Practically that was what was done, but actually the Peoples bought all the assets of the bank and put the bank out of business.

Mr. Dubord: We claim that they didn't buy all the assets; and that the contract of consolidation, or whatever you call it, said nothing at all with reference to trusts of any kind, including this so-called Sprague trust, and before we get through here I will introduce a copy of that agreement which will speak for itself. One of the issues will be interpretation of that contract.

STIPULATION

It is further stipulated that immediately after this agreement of August 3, 1931, the aggregate amount of the cash then on deposit in the trust department of the Ticonic National Bank, representing all the cash in the trust known

as the Ticonic National Bank Trust, amounted to $10,127.66.

It is further stipulated that this amount of $10,127.66 was deposited by the officials of the Ticonic National Bank in a commercial checking-account in the Peoples-Ticonic National Bank, the Peoples-Ticonic having received that name on that day.

[fol. 22] Mr. Dubord: I wouldn't want to say it did exactly on that same day, but the contract gave them the right to assume that name "Ticonic." The thing for us to remember is this: There were two banks in Waterville, one known as the Peoples National Bank and one known as the Ticonic National Bank. This Sprague trust now in issue was a Ticonic National Bank trust. Then the Peoples National Bank took over the Ticonic National Bank—Mr. Eaton says they took everything over; we say not everything. And at the same time, as a part of the contract, they took the right to use the word "Ticonic" and change the name to Peoples-Ticonic National Bank——

The Court: They were still going along as the Ticonic?

Mr. Eaton: The Ticonic wasn't going.

Mr. Dubord: The Ticonic ceased to do a banking business.

The Court: How could the Ticonic make a deposit with the Peoples-Ticonic if the Ticonic had ceased to be a bank?

Mr. Dubord: They were still there. They weren't out of business completely. They continued to hold Directors' meetings and continued to draw checks.

Mr. Picher: They went into voluntary liquidation.

Mr. Dubord: Subsequent to the deposit of the checking account in the Peoples-Ticonic National Bank of this sum of $10,127.66, on August 3, 1931, various amounts were deposited in this checking account by the officers of the Ticonic National Bank and checks drawn upon this account, so that at the date of the suspension of the Peoples-Ticonic National Bank, on March 4th, 1933, the aggregate amount in this checking account, representing the total of all former Ticonic National Bank trusts, was $12,462.21.

STIPULATION

It is further stipulated that among the assets bought by the Peoples National Bank at the time the Ticonic National Bank was taken over, were $20,000. Kingdom of Denmark bonds which had been segregated by the Ticonic National Bank to secure its uninvested trust funds; and it is further

stipulated that these bonds were subsequently sold in behalf——

[fol. 23] The Court: It seems that the Ticonic National Bank accepted this trust as such, placed the money in its commercial department as a credit to its trust department, and secured the deposit, with other like deposits, with bonds exceeding the value of the total amount of such trust deposits.

(Conference between Court and counsel.)

* * * * * * *

OFFERS IN EVIDENCE

(Defendant's Exhibit No. 1 marked.)

Mr. Dubord: We offer Defendant's Exhibit No. 1.

The Court: Admitted.

The Court: That is the only contract they had?

Mr. Dubord: That is the only one we know of.

The Court: And in pursuance of that they turned over cash and securities and so on?

Mr. Dubord: Yes.

The Court: Did they make any entry on their books in regard to this trust?

Mr. Dubord: Not a word about the trust anywhere.

The Court: How about the other trusts?

Mr. Dubord: Not a word anywhere.

(Plaintiff's Exhibit A marked.)

Mr. Eaton: We offer Plaintiff's A.

The Court: Admitted. What has that got to do with it? Harold admits that the first bank had it as a trust?

Mr. Eaton: Now just let me explain. At a meeting of the stockholders of the Ticonic National Bank held January 13, 1931, Charles W. Vigue and Carroll N. Perkins were elected directors. At the meeting of directors subsequently held on the same day Charles W. Vigue was elected president of the Ticonic Bank. At the same time he was president of the Peoples Bank; and, therefore, when sitting in that meeting of directors of the Ticonic Bank he was president of the Ticonic Bank and also president of the Peoples Bank.

The Court: Well, what of it?

Mr. Eaton: Notice to the Peoples Bank of that trust.

The Court: Notice that the Ticonic had the trust?

[fol. 24] Mr. Eaton: Yes. Notice that the Ticonic had received that trust.

The Court: I thought that is admitted.

Mr. Eaton: And the Peoples had notice of it.

Mr. Dubord: What difference would that make?

The Court: Yes. It might have been published in the newspapers, so far as that is concerned. But if they want to assume it, that is another matter. What I want to know is in what way the Peoples-Ticonic Bank assumed and agreed to execute the trust which we admit that the Ticonic Bank once had.

Mr. Eaton: August 3, 1931, the directors of the Ticonic Bank met, including Mr. Vigue, who was president of that bank; and upon the same day the directors of the Peoples Bank met, of which Mr. Vigue was also president, and they entered into an agreement to take over the assets of the Ticonic, and, as the contract says, perhaps I will read from this:

"Whereas, under the foregoing circumstances, the Directors of said Ticonic Bank deem it wise to enter into this agreement whereby all the depositors will be promptly paid or their accounts assured, and its known liabilities assumed by said Peoples Bank;"

Mr. Dubord: Yes, but they don't say that in the body of the agreement.

The Court: Well, the Peoples Ticonic did assume to pay all the depositors?

Mr. Dubord: Yes. But this wasn't the depositors. It was a trustee.

The Court: I thought it was a deposit.

Mr. Dubord: No. The deposit in the commercial department of the Ticonic Bank, of the bank itself as trustee. It wasn't in the same category as a deposit that you or I might have had in the bank.

The Court: I appreciate that fact, but it was a deposit.

Mr. Dubord: Yes, but a different type of a deposit, and in the body of the agreement that we have here there isn't a word said about any trust. And there is no difference in a [fol. 25] deposit made in the Peoples-Ticonic National Bank of that money than as if they had come down to Portland and put it into the Fidelity——

The Court: Well, put in your evidence. You are arguing. What I want is facts. What other facts have you to put in the record?

(Court and counsel confer, off the record.)

* * * * * * *

The Court: Now let Harold go ahead and put in the rest of the evidence. Then, if there is anything lacking, you can call attention to it.

ARTHUR G. PICHER, being duly sworn, testified as follows:

Direct examination.

By Mr. Dubord:

Q. Now, Mr. Picher, who was the Trust Officer of the Ticonic National Bank?

A. At what time?

Q. Well, prior to August 3, 1931?

A. George K. Boutelle; Cyril Joly.

Q. Both of those men were and are attorneys in Waterville?

A. That is right.

Q. Now after August 3, 1931, can you tell us what took place in so far as the administration of the so-called Ticonic Trust was concerned?

A. So far as can be seen from the record, the administration was continued by the trust officers of the Ticonic National Bank.

Q. And do you mean Mr. Joly and Mr. Boutelle?

A. And by Mr. Vigue, who was also trust officer.

Q. But also by the other two I have named?

A. Yes.

Q. Are there records of meetings of the Ticonic National Bank after August 3, 1931?

A. Yes, there are.

Q. Well, up to what date?

A. Up to—the last date of record is June 22, 1933.

Q. I have in my hand copy of record book of the Ticonic National Bank—of the Directors—and I turn to page 176 and will you tell us if there appears on that page a record

[fol. 26] of a meeting held on June 15th, 1932, of the Directors of the Ticonic National Bank?

A. Yes.

Q. Now to keep the record straight, I ask you if you find the record on page 176 of a meeting held on June 15th, 1932?

A. Yes.

Q. Who were present at that meeting?

A. George K. Boutelle, William J. Lanigan, William L. Brown, John Ware, Charles W. Vigue.

Q. Now will you tell us what was taken up at that meeting, according to those records? Giving it in substance?

A. Well, at this meeting the following resolution was adopted: "That, whereas the Ticonic National Bank is Trustee under an indenture of trust made to it by the Lombard Traction Engine Company, now known as the Lombard Tractor & Truck Corporation, which indenture is dated May 5, 1925, and recorded in Kennebec Registry of Deeds, Book 629, Page 111; and whereas it is the desire of said Ticonic National Bank to resign from said trust, Voted: That said Ticonic National Bank does hereby resign as Trustee under the above-named indenture, said resignation to take effect upon its acceptance by the Board of Directors of the Lombard Tractor & Truck Corporation and the appointment with the assent of the holders of the majority of the bonds secured hereunder, and the acceptance of the successor Trustee all in accordance with the terms of said indenture of trust. Upon Motion duly Seconded, it was voted to Adjourn."

Q. Now do those records show that a meeting of the Directors was held on October 22, 1936? I mean 1931?

A. Yes. It does.

Q. Was there a quorum present at that meeting?

A. A quorum being lacking, adjournment was taken until October 23rd, 1931.

Q. What do the records show about a meeting being held on October 23rd, 1931?

A. An adjourned meeting of the Directors was held at two o'clock, with the following directors present: Charles W. Vigue, G. K. Boutelle, W. J. Lanigan, Carroll Perkins, John Ware, W. L. Brown and J. L. Taylor.

Q. Do the records indicate that a meeting was held on November 25, 1931?

A. Yes, sir.

[fol. 27] (Book of records marked Defendant's No. 2.)
(Bundle of checks marked Defendant's No. 3.)

The Court: When the Peoples-Ticonic Bank succeeded the Ticonic, to the extent that it did succeed it, no securities representing invested trust funds formerly in the possession of the Ticonic were turned over to the Peoples-Ticonic; no securities representing any investment in securities by the Ticonic Bank as Trustee were turned over to the Peoples-Ticonic Bank; no cash and no individual trust was separately turned over to the Peoples-Ticonic, but included in the aggregate of all cash and assets turned over by the Ticonic to the Peoples-Ticonic was the amount represented on the books of the Ticonic as being the total of all uninvested funds held by the Ticonic and placed by it in its commercial department to the credit of its trust department.

(Mr. Picher resumes the stand.)

* * * * * * *

Direct examination continued.

By Mr. Dubord:

Mr. Eaton: I will say that the bond register of the Ticonic Bank was taken over by the Peoples-Ticonic and contained an entry of $20,000. Kingdom of Denmark in Trust Box 1080. I supposed the book would be here.

Mr. Dubord: That is true.

Q. Now, Mr. Picher, I show you 28 checks which are marked—which are grouped together and marked Defendant's Exhibit 3; and I ask you if you will tell us what those are?

A. These checks are the checks that were drawn in payment of trust funds, drawn by the Trust Officer of the Ticonic National Bank against the checking account in the Peoples-Ticonic National Bank.

Q. And are all of these checks payable to Margaret Davis Sprague, the beneficiary of the so-called Sprague trust?

A. Yes, sir.

Q. Are these checks all dated subsequently to August 7th, 1931?

A. Yes, they are.

Q. Now I see some checks here signed by Cyril M. Joly. Who was he?

A. Trust Officer of the Ticonic National Bank.

[fol. 28] Q. Was he trust officer or assistant trust officer?

A. Assistant trust officer.

Q. I see some are signed by George K. Boutelle? Who was George K. Boutelle?

A. He was trust officer of the Ticonic National Bank.

Q. I see some here, towards the last, with the sticker of the First National Bank, Waterville, Maine, over the name of the Ticonic National Bank. What does that mean?

A. That means that the proceeds of the moneys in the trust department of the Ticonic National Bank were placed in the First National Bank of Waterville after the formation of the new bank, for the payment of trust funds in the Ticonic National Bank.

Q. And how are those signed?

A. C. W. Vigue, President.

Q. Well, would you say they are signed "Ticonic National Bank, by C. W. Vigue, President"?

A. Yes.

Mr. Dubord: I offer Defendant's 3; and also 2.

The Court: Admitted.

Q. Now, Mr. Picher, these checks that we have just introduced here are all checks drawn in connection with the Sprague trust. Were there other checks drawn on this same account in connection with the other Ticonic trusts?

A. All Ticonic trusts were paid from the same account by check.

Q. How many Ticonic trusts were there in that same category as this Sprague matter?

A. Twelve, I believe. I am not positive.

Q. And were they all handled in similar manner?

A. Yes. All handled in similar manner.

Q. Will you tell us about a Charles W. Moore trust in the Ticonic National Bank? As to when that was started?

A. On the ledger card it shows February 2nd, 1932, one thousand dollars.

Q. That means that the officers of the Ticonic National Bank put in one thousand dollars on the Charles Moore trust?

A. I am assuming it is the Charles Moore trust from this date here.

Q. Was there other money taken in on that same trust, subsequently?

A. On July 22nd, 1932, there was received from the Ticonic National Bank interest at four per cent on uninvested principal, $8.34. They paid interest on that checking account. August 10th, 1932, was another interest payment of ten dollars.

[fol. 29] The Court: Who did they pay that to?

A. Paid it to the trust. They gave credit to the trust for the amount of interest——

The Court: I am talking about the Peoples-Ticonic Bank.

A. I am talking about the Ticonic. They credited interest to the account of the Charles Moore trust—and likewise to all trusts.

Q. And did they receive any other large amount from anybody connected with Moore?

A. November 2, 1932, one thousand dollars.

Q. Is there any other amount received from the administrator of the estate?

A. June 30, 1933, $891.25.

Q. Who was that received by?

A. Received by Ticonic National Bank.

Q. What was done with those funds?

A. They were placed in the Ticonic National Bank trust account in the Peoples-Ticonic National Bank.

Cross-examination.

By Mr. Eaton:

X Q. Mr. Picher, you say there was some ten thousand dollars of uninvested trust funds in the Ticonic Bank on the 3rd of August, 1931. That money was taken over by the Peoples-Ticonic, was it?

A. Yes, sir.

X Q. What was the entry made? Have you got that here?

A. Let's see. (Looks at paper.) Right here (indicating).

X Q. This is a sheet from what bank?

A. From the Peoples Bank. The Peoples-Ticonic.

X Q. Now show us that entry, please?

A. Well, right here—August 6th. On August 3rd the account was $10,127.66, and the next entry was August 6th.

X Q. There is no name there?

A. No.

X Q. Is that Trust Department?

A. Yes.

XQ. And you say that this amount here is the amount of uninvested trust funds received from the Ticonic?

A. That is right.

XQ. On what date?

A. The last date is July 27th, 1931. And the same amount held true on the date of the take-over.

XQ. That (indicating) had been used by the Ticonic Bank?

A. Yes.

[fol. 30] XQ. And on August 3rd it was taken into the possession of the Peoples-Ticonic?

A. Yes.

XQ. And carried on as the Peoples-Ticonic account?

A. Yes. No!

XQ. Well, carried on as the account of the Ticonic Trust in the Peoples Bank?

A. Yes.

(Plaintiff's No. B marked.)

Mr. Eaton: I offer Plaintiff's B.

The Court: Admitted. You had better put them all in.

A. These credits are a continuation of that account there.

XQ. So that on August 3rd, 1931, that uninvested trust money in the Ticonic was taken into the Trust Department of the Peoples?

A. No.

XQ. Well, was it entered as a trust account?

A. No. Entered in the checking account.

XQ. Entered in a checking account as a trust?

A. No. A checking account in the Peoples Bank.

XQ. That is headed "Trust Department."

A. Yes.

XQ. And the continuation of that is headed "Trust Department"?

A. Yes. But the beginning of that is Ticonic.

XQ. Very good. And it is continued, from and after August 3rd, as the Peoples? That account is continued by the Peoples Bank?

A. No. It is continued as the Ticonic Trust Account. The trust accounts were handled as individual accounts. Not like that at all.

X Q. This record from and after August third was kept by the Peoples?

A. Yes.

X Q. And it is headed "Trust Department"?

A. Yes.

X Q. That is Plaintiff's No. B.

The Court: That came from the other bank?

A. Yes.

X Q. And then the Peoples bank continued it under the same name of Trust Department until November 24th, 1933?

A. Yes.

X Q. How did it come to stop then?

A. The Receiver transferred the funds to the Receiver's account.

X Q. And you were the receiver?

A. Yes, sir.

X Q. Payments were made from that fund occasionally?

A. Yes.

[fol. 31] X Q. By checks drawn?

A. Yes.

X Q. I show you check dated August 7, 1931, signed Cyril M. Joly, Assistant Trust Officer, Account of Lottie F. Sprague Trust, Number 28. Who paid that?

A. The Peoples National Bank paid it.

X Q. The Peoples National Bank?

A. Yes.

X Q. That is Lottie F. Sprague Trust No. 28?

A. Yes.

X Q. Now, who paid the rest of these checks down to February 28, 1933?

A. The Peoples National Bank.

Mr. Dubord: Shouldn't you say the Peoples-Ticonic National Bank?

A. Yes.

X Q. Do all these checks appear to be drawn against the Lottie F. Sprague Trust?

A. No. They are drawn against the Trust Department of the Ticonic National Bank.

X Q. "Account of Lottie F. Sprague Trust"?

A. Yes.

XQ. And Mr. Boutelle was the Trust Officer of the Ticonic National Bank?

A. Yes.

XQ. And Mr. Joly was——

A. He was a Trust Officer in that case (indicating).

XQ. And who was Mr. Vigue?

A. He was president and trust officer of the Ticonic National Bank.

XQ. And what position did he hold in the Peoples National Bank?

A. President of the Peoples National Bank.

XQ. Which at that time was the Peoples-Ticonic?

A. Yes.

XQ. When did he become president of the Peoples National Bank?

A. Many years ago. I couldn't say.

XQ. When did he become president of the Ticonic National Bank?

A. When Financial Institutions acquired possession of the stock. I think the Directors' record would show that. It was prior to the date of the take-over, if that is what you mean?

XQ. That is exactly what I mean. And may we have it understood that he became a director of the Ticonic Bank November 20th, 1930, and became president ~~July~~ January 13, 1931?

A. Yes.

XQ. I'm sorry that record isn't here—By Gorry, I guess it is here.

A. Well, if it is here it is in that book. (Counsel and witness examine papers.)

XQ. Now, Mr. Picher, I hope we can avoid the necessity [fol. 32] of sending for the book which my brother inadvertently left behind. Did you find among the books that you took over as receiver a bond register?

A. I did.

XQ. And whether or not you found in that bond register a record of $20,000, Kingdom of Denmark bonds, No. M-11022 to M-11041, External Sixes, of 1942, purchased August 3, 1931, from Ticonic National Bank?

A. Right.

XQ. And do you find on the register—And was that the register formerly of the Ticonic National Bank?

A. Yes.

X Q. And did it pass into the hands of the Peoples Bank?
A. Yes.
X Q. And then passed into your hands as receiver?
A. Yes.
X Q. And whether or not with the record of those bonds you found this entry "In trust Box No. 1080"?
A. Yes. Right.
X Q. What did you do with those bonds?
A. I sent them to the Special Liquidator of Securities, Dr. Paul W. Atkins, Federal Reserve Bank, New York City.
X Q. And sold them?
A. Yes.
X Q. Now then, perhaps it will save a little time—Whether or not in the record of the Directors of the Ticonic National Bank, under date of June 6th, 1929, you find this record: "Upon motion duly seconded it was voted to segregate and deposit with the Trust Department $20,000. Kingdom of Denmark 6s, due 1942."
A. That is right.
X Q. And those are the same Kingdom of Denmarks which you subsequently received and sold?
A. I believe they are, Yes, sir.
X Q. You believe they are?

The Court: Let me ask; did the Peoples-Ticonic take over the books of the Ticonic Bank?
A. No.
The Court: They didn't?
A. They did take over that bond register because I imagine it had a better cover on it than the other. And they used it for all the bonds.
The Court: Did the Peoples-Ticonic take over an individual deposit ledger, so-called?
A. No, sir. Distinctly separate.
The Court: Did they take over any trust records of the Ticonic?
A. No. Nothing in the Peoples-Ticonic other than that checking-account, to indicate the existence of the Ticonic trust.
[fol. 33] The Court: Now when you had this money—this ten thousand dollars—you had it on your individual deposit ledger?
A. Yes. It was kept on those ledger cards.
The Court: You call that the individual deposit ledger?

A. They didn't keep a ledger.

The Court: Didn't they keep a big ledger?

A. No. That is the record. Those ledger cards.

The Court: Didn't they have a great big book——

A. No. A Boston Ledger? No. They don't do that any more. That (indicating) is a bookkeeping machine.

The Court: That is the original account there?

A. Yes. Well, I don't know how original it is. It goes way back.

The Court: I mean original entry.

A. Yes.

The Court: Of course you didn't receive any one sum of money distinct from any other sum. I suppose you received from the Ticonic a large sum of money.

A. From the Ticonic.

The Court: Did the Peoples-Ticonic receive cash?

A. Ten thousand and some dollars in cash on the day of the take-over.

The Court: That wasn't all the cash they received?

A. No. That was the cash for the Ticonic National Bank Trust.

The Court: It was all in one lump?

A. When they took over the assets——

The Court: Did they take that sum over as a separate fund?

A. As far as I can see from the record. The credit was made on the account.

The Court: How did that ten thousand dollars come into the possession of the Peoples-Ticonic?

A. As a commercial——

The Court: No. How did the cash come in?

A. No different than any other money. It was all together. As a matter of fact there wasn't any money when I got there. We had some notes to pay,——

The Court: I am talking about the Peoples-Ticonic?

A. That is what I mean. It was general cash.

The Court: The Peoples-Ticonic took over this other bank in 1931?

A. Yes.

The Court: Of course I am talking about 1931 when this merger took place.

A. Yes.

[fol. 34] The Court: They took over obligations of the other bank, didn't they?

A. They assumed some of the liabilities.

The Court: They took over all the deposit liability?

A. Yes.

The Court: They agreed to pay all the depositors?

A. Yes.

The Court: Your position is that this is one of the depositors they agreed to pay?

A. Yes.

The Court: Off the record——

(Court and counsel confer.)

The Court: Having taken over this lump sum of something over ten thousand dollars—$10,127.66—which represented the amount of money previously in the Ticonic, which the Ticonic had held in trust and deposited in its commercial account to the credit of its trust department,—the Peoples-Ticonic having taken that over, did it exercise any discrimination when it received checks on that account from the previous trust officers of the Ticonic? Did it make any inquiries, or concern itself, with the question as to whether any one trust fund was overdrawn, or otherwise?

A. As far as I can see——

(Court and counsel confer, off the record.)

The Court: Take this. When you received this aggregate sum of money, or something over ten thousand dollars,—I mean the Peoples-Ticonic—the Peoples-Ticonic had no examination, I understand from what you say, as to the items making up that amount. That is right. The Peoples-Ticonic simply held itself in readiness to pay it on checks of the trust department of the Ticonic up to the total amount in that credit item?

A. Yes.

The Court: And when it got up to that much, you stopped?

A. Yes.

X Q. Do you remember, Mr. Picher, quite a long time ago, I was there and looked at these records with you?

A. Yes.

X Q. And found this vote: "Upon motion duly seconded it was voted to segregate and deposit with the trust department $20,000 Kingdom of Denmark 6s, due 1942."

A. Yes, I do.

X Q. And you had those bonds at that time?

A. Not in my possession.

X Q. Where were they?

A. They were with the Special Liquidator of Securities, for sale.

[fol. 35] X Q. You knew then that they bore a mark "In trust Box 1080"?

A. Well, I did then. Yes.

X Q. And they were then with the liquidating agent for sale?

A. Yes.

(Defendant's Exhibits 4 and 5 marked.)

X Q. When were those Kingdom of Denmarks sold?

Mr. Dubord: I haven't any information.

The Court: Off the record——

(Conference.)

The Court: I understand, Mr. Picher, that when these Denmark bonds which had previously been held by the Ticonic as security for its trust funds were taken by you and sent to New York for sale and subsequently sold that the proceeds were segregated to take the place of the bonds?

A. Yes.

The Court: For the purpose of securing any trust liens that might be against those proceeds?

A. In the Peoples Bank. The Peoples-Ticonic.

The Court: Do you mean to say that after the bonds came into the possession of the Peoples-Ticonic that they used them as security for their own obligations?

A. Along with about $175,000. worth of other bonds. They were amongst the bonds segregated to secure these trusts.

The Court: And they put them with their own bonds?

A. Yes.

The Court: And segregated them to secure their own trust obligations?

A. Yes.

The Court: In that total of their own trust obligations was this ten thousand dollars included?

A. No. It never was included as a trust account.

The Court: I misunderstood you.

X Q. When were those bonds segregated by the Peoples-Ticonic?

A. I couldn't tell you without the bond register.

X Q. Have you any such record?

A. In the bond register. We have to pick them out individually.

X Q. I asked you when those Kingdom of Denmark bonds were segregated by the Peoples-Ticonic?

A. I don't know.

X Q. Were they ever?

A. Yes.

[fol. 36] X Q. How do you know?

A. Because they were segregated in the box, along with the other bonds that were segregated to secure Peoples-Ticonic trusts.

X Q. You had the bond register which showed that they were segregated in box 1080?

A. Yes.

X Q. Wasn't that a Ticonic box?

A. There was no such thing as a Ticonic box at that time.

X Q. When was that entry "In trust box—" put on that register?

A. I don't know.

X Q. Was it put on before it came into your hands?

A. Yes.

X Q. Don't you think—Well, I don't know as I care what you think. What is there to show that these bonds had been segregated by the Peoples-Ticonic?

A. The only thing that there was to show was that they were listed as segregated bonds along with the other bonds——

X Q. Listed where?

A. In the receiver's receipt that I received.

X Q. Who with?

A. The conservator. And they were segregated with the other bonds on that list in a trust box.

X Q. And they came into your hands as segregated bonds?

A. Yes.

The Court: Segregated to secure the trust obligations of the Peoples-Ticonic?

Mr. Eaton: Yes, sir. But there is the vote of the Ticonic which owned them at the time the vote was passed that they were segregated for the Ticonic; and this action is against the Ticonic.

Mr. Dubord: It is against the Peoples-Ticonic.

Mr. Eaton: This bill in equity is against the Ticonic National Bank of Waterville.

The Court: Have you any assets of the Ticonic?

A. No cash.

The Court: What have you got?

A. We have collection of rents from their real estate. We have their real estate. We have twelve pieces of real estate.

The Court: This may be an obligation against the Ticonic.

X Q. How much cash was received by the Peoples from the Ticonic at the time of the sale in August, 1931?

A. How much cash received by the Ticonic?

[fol. 37] X Q. No. Received by the Peoples from the Ticonic?

A. I can't tell you that here. I couldn't tell you the cash on hand in the Ticonic on that date.

The Court: Off the record——

(Conference between Court and counsel.)

* * * * * * *

The Court: Well, have you got in all the evidence you want to offer?

Mr. Dubord: I wanted to introduce these two papers. Plaintiff's 4 and 5.

Mr. Eaton: No question about them. No objection. I don't see what bearing they have.

Mr. Dubord: Number 4 is a list of the so-called Ticonic trusts, including the Sprague Trust as of the date of consolidation on August 3rd, 1931, Exhibit 5 being a similar list as of March 4th, 1933.

The Court: Admitted.

(Hearing closed at 3.45 p. m.)

Certificate

I certify that the foregoing is a correct transcript of my short-hand notes taken at the time and place and in the above described matter.

O. D. Hooper, Shorthand Reporter, U. S. Courts.

Portland, Maine, 11th March, 1936.

[fol. 38] **Plaintiffs' Exhibits**

EXHIBIT "A"

F. Harold Dubord, Attorney and Counsellor at Law
101 Main Street, Waterville, Maine

Sept. 24, 1935.

Harvey D. Eaton, Esq., Attorney at Law, Waterville, Maine.

DEAR MR. EATON:

Kindly pardon the long delay in answering your letter of July 30th, in which you asked if we could agree at the trial of the Sprague case that at a meeting of the Directors of the Ticonic National Bank, at which Mr. Vigue was present, on April 2nd, 1931, a vote was passed as follows:

"Upon motion, it was voted to confirm the action of Mr. Boutelle in accepting in behalf of the bank, the Sprague trust dated March 28, and to authorize the trust officer to carry out the provisions contained therein."

I have just examined the records in question, and find that this vote is on record, so I shall be pleased to agree to its admission.

Yours very truly, F. Harold Dubord.

FHD:P.

EXHIBIT "B"

Omitted from printed record. See stipulation, side folio 47.

[fol. 39] **Defendants' Exhibits**

EXHIBIT 1

This Memorandum of Agreement made this third day of August, A. D. 1931, by and between "The Ticonic National Bank of Waterville" of Waterville in the County of Kennebec and State of Maine, a national banking association duly organized under the laws of the United States of America and hereinafter for convenience referred to as the

"Ticonic Bank" and "The Peoples National Bank of Waterville" of said Waterville, likewise a national banking association existing under the laws of the United States of America hereinafter for convenience referred to as the "Peoples Bank."

Witnesseth:

Whereas, the said Ticonic Bank has certain loans which can not be promptly realized upon and has suffered a large depreciation in its bond and investment accounts to the extent that its surplus and undivided profits have been entirely lost and its capital seriously impaired, and

Whereas, the liabilities of the Ticonic Bank consist for the most part of several million dollars due to depositors, whose demands may at any time cause embarrassment and loss and place said Ticonic Bank in a serious predicament, and.

Whereas, the Treasury Department of the United States of America insists that prompt action must be taken or it will be obliged to close and liquidate said Ticonic Bank, and

Whereas, under the foregoing circumstances the Directors of said Ticonic Bank deem it wise to enter into this agreement whereby all the depositors will be promptly paid or their accounts assured, and its known liabilities assumed by said Peoples Bank;

Now, Therefore, the said Ticonic Bank and said Peoples Bank *Bank* mutually agree as follows:

First. Said Peoples Bank will assume or pay all the indebtedness of said Ticonic Bank to its depositors as shown [fol. 40] by its books, together with any other usual current liabilities not to exceed five thousand dollars ($5,000.), and redeem its circulating notes.

It will take over from said Ticonic Bank all deposits of said depositors and at the election of depositors receive them as such or pay them in full the amount of their deposits. The gross amount of deposits so taken over and assumed as of August 1, 1931, is $4,207,127.12 and is to be revised as of the close of business August 3, 1931.

Second. Said Ticonic Bank shall pay said Peoples Bank for its assumption of said liabilities by the transfer of the following listed assets of said Ticonic Bank:

A. 180 shares of the capital stock of the Federal Reserve Bank of Boston, or the amount realized on the surrender thereof.

B. All the checks, currency or other cash items on hand at the close of business August 3, 1931.

C. The banking house, furniture and fixtures, equipment and supplies.

D. All other bonds, stocks and securities of the bank not including other real estate owned or customers' notes, excepting however such bonds and stocks as are specifically listed in Schedule F attached hereto. Said bonds, stocks, and securities being specifically listed in Schedule D-1 hereto attached.

E. All the notes and mortgages of said Ticonic Bank, except such as are specifically set forth in a schedule marked Schedule F attached hereto.

Third. Said Schedules A, B and C shall be credited on the total amount due said Peoples Bank by reason of said assumption of the liabilities of said Ticonic Bank at the book value of all the items contained in said Schedules A, B and C as of the close of business August 3, 1931, plus accrued dividends, if any, on said Federal Reserve Bank stock. The items in Schedule D, specifically listed in D-1 shall be credited at the price at which the same can be sold on August 3, 1931, such possible price to be determined by said Peoples Bank, but said Ticonic Bank, or its assigns, [fol. 41] shall have the right to buy for cash any of said items at the sale price so fixed by giving notice of its, or their, intention so to do on or before August 6, 1931. The items in Schedule E shall be credited at the book value as of the close of business August 3, 1931, with interest or discount adjusted to said date.

Fourth. Said Peoples Bank agrees to allow said Ticonic Bank for the good will of its banking business and in consideration of the agreement of the officers and directors of the Ticonic Bank of their hearty co-operation and assistance in the securing and retention of deposits in said Peoples Bank, fifty thousand dollars ($50,000.), said sum to be deducted in ascertaining the amount of the note to be given said Peoples National Bank by said Ticonic Bank as more particularly set forth in the Fifth Article of this agreement.

Fifth. The total amount of all the items shown in said schedules A to E inclusive, plus the sum of fifty thousand dollars, the allowance set forth in the Fourth Article of this agreement, shall be deducted from the total of said known liabilities plus the five thousand dollars ($5,000.) above referred to, and for the balance so found to be due, said Ticonic Bank shall execute and deliver to said Peoples Bank its non-negotiable promissory note, due in two years from August 3, 1931, with interest at five per cent per annum, payable semi-annually, and as security therefor the said Ticonic Bank shall transfer to said Peoples Bank all other assets of the said Ticonic Bank of whatever name, nature or description, save only possible actions or causes of action, if any, against any of the officers or directors of said bank for mismanagement of its affairs, or violation of the National Banking Act not amounting to defalcation. All known assets so pledged are listed in Schedule F hereto annexed.

Sixth. Said Peoples Bank shall proceed with due and reasonable diligence to turn into cash all assets listed in Schedule F, crediting all amounts received on said note of August 3, 1931, to it from the Ticonic Bank. In so doing said Peoples Bank shall act in co-operation with and under the direction of a committee to consist of three to be designated by said Peoples Bank and two to be designated by [fol. 42] said Ticonic Bank. In the event of the death or incapacity of any member of said Committee, the vacancy on said committee so caused may be filled by the bank which made the original appointment. Said committee shall act by a majority, but shall not take action without conference with the appointees of said Ticonic Bank or their successors. Said Ticonic Bank, or any of its shareholders shall have the right to take over any of the assets in Schedule F on payment of the book value therefor, or at any lesser amount which may be agreed to by said committee. Said Peoples Bank shall also have the right to take over any of said assets, which said Ticonic Bank shall not have notified said committee that it desired to take over, at the book value or at such lesser value as may be agreed to by said committee, crediting the amount thereof upon said note. If on the due date of said note any of said assets shall not have been collected or otherwise disposed of, the same shall be sold at public auction in said Waterville, and the said

Ticonic Bank or any of its stockholders, or the said Peoples Bank shall have the right to bid therefor, payment to be made in cash. In the event that as a result of the liquidation of said assets said Peoples Bank receives more than enough to pay the amount of said note, with accrued interest thereon, said balance shall be paid in cash to the Ticonic Bank, or the liquidating agent appointed therefor. If the said Peoples Bank receives enough to pay said note before all the assets are disposed of, it shall forthwith turn over such other assets in Schedule F to said Ticonic Bank, or the liquidating agent appointed therefor. At the expiration of said two years, said Peoples Bank shall also credit on said note the amount by which the current liabilities not shown on the books fall below the five thousand dollars ($5,000.) arbitrary estimate above referred to.

Seventh. Interest to the date of collection, or transfer, as the case may be shall be credited on all such other assets in Schedule F, and in determining the amount of said note, interest shall also be accrued on all liabilities drawing interest at the rate thereof.

Eighth. The Peoples Bank in making such liquidation shall have the right to charge against said assets shown in [fol. 43] Schedule F all out of pocket expenses in connection with such liquidation, but shall not have the right to make any charge for its services in connection therewith.

Ninth. The Ticonic Bank warrants that it has good title to all the assets listed in said Schedules.

Tenth. It is distinctly understood and agreed that in the event such assets in Schedule F are not sufficient to pay the amount of said note and interest when liquidated as above provided, that the Ticonic Bank shall remain liable therefor and that any and all statutory liability for assessment on the part of any of the stockholders of said Ticonic Bank is hereby expressly retained and kept alive for that purpose. Said Peoples Bank agrees, however, that it will make no claim against any of the officers or employees of the Ticonic Bank by reason of any alleged improper management of the same or violation of the National Banking Act which does not amount to a defalcation and that said Peoples Bank will make no move to have any such claims taken into consideration in determining the amount of the statutory assessment against stockholders, if any.

Eleventh. It is contemplated that this transfer shall take effect August 3, 1931. If for any reason the transfer is delayed beyond that date it shall be made effective as near as may be as of that date, and any and all running expenses of the Ticonic Bank after that date shall be paid by said Peoples Bank which as of that date shall have the full right to fix the compensation of all officers and employees.

Twelfth. When, as and if said liquidation shall be fully completed the said Ticonic Bank will surrender its charter and go out of business. In the mean time said Peoples Bank is authorized in the event that it changes its name to use the word "Ticonic" as a part of the name of said bank in any way it desires. Said Ticonic Bank also agrees forthwith to take proper steps by way of vote of its stockholders or otherwise to accomplish this liquidation and specifically to ratify and confirm this agreement and any and all other agreements or legal instruments of whatever name and na-
[fol. 44] ture necessary or advisable in order to carry the same into effect according to its true intent and purpose.

In Witness Whereof the said The Ticonic National Bank of Waterville has caused these presents to be signed in its name and behalf and its corporate seal to be hereto affixed by Julian D. Taylor, its Vice-President and George H. Viles, its Cashier, both hereunto duly authorized, and the said The Peoples National Bank of Waterville has caused these presents to be signed in its name and behalf and its corporate seal to be hereto affixed by Charles W. Vigue, its President and William T. Johnson, its Cashier, both hereunto duly authorized, and all on the day and year first above written.

The Ticonic National Bank of Waterville, by Julian D. Taylor, Its Vice-President, by George H. Viles, Its Cashier. The Peoples National Bank of Waterville, by Charles W. Vigue, Its President, by William T. Johnson, Its Cashier.

EXHIBIT 2

Omitted from printed record. See stipulation, side folio 47.

EXHIBIT 3

Omitted from printed record. See stipulation, side folio 47.

[fol. 45] EXHIBIT 4

Ticonic National Bank

Cash balances of various trusts as of August 3, 1931.

Trust No.		
1	Jerry M. Cratty	$315.76
2	Ella W. Goding	452.98
4	Lottie F. Sprague	4,822.18
5	Sigma Kappa Convention	462.18
6	Myrtle Weeks	467.67
7	P. W. and H. O. Burrington	421.96
8	Estate Sarah J. Clarke	296.52*
9	Pauline Fowler	12.50
10	Ronello O. Jones	176.19
12	Sarah E. Percival	339.31
13	Frank Redington	560.95
14	Albert Wade	105.09
15	Albert & Katherine Wade	2,116.00
19	Ticonic Foot Bridge	171.41
	Cash balance as shown by Ledger Sheet Aug. 3, 1931	$10,127.66

* In Red.

[fol. 46] EXHIBIT 5

Ticonic National Bank

Cash balance of various trust as of March 4, 1933.
Date of suspension of Peoples-Ticonic National Bank.

Trust No.		
1	Jerry M. Cratty	$217.82
2	Ella W. Goding	507.40
4	Lottie F. Sprague	4,099.83
5	Sigma Kappa Convention	471.03
6	Myrtle Weeks	409.96
7	P. W. & H. O. Burrington	509.05
8	Estate Sarah J. Clarke	208.46*
9	Pauline Fowler	11.84
10	Ronello O. Jones	188.13
11	Charles W. Mower	1,919.69
12	Sarah E. Percival	1,277.05
13	Frank Redington	606.95
14	Albert Wade	108.09
15	Albert & Katherine Wade	2,197.21
19	Ticonic Foot Bridge	146.62
	Cash balance as shown by Ledger Sheet, March 4, 1933	$12,462.21

* In Red.

[fol. 47] IN UNITED STATES DISTRICT COURT

STIPULATION OMITTING PLAINTIFFS' EXHIBIT "B" AND DEFENDANTS' EXHIBITS 2 AND 3—Filed September 2, 1936

It is stipulated and agreed by the parties that Plaintiff's Exhibit B and Defendants' Exhibits 2 and 3 need not be printed on account of the practical impossibility of reproducing them, and that the original exhibits may be produced and used by either party at the argument. This stipulation shall be printed in lieu of said exhibits and entitled "Plaintiff's Exhibit B and Defendants' Exhibits 2 and 3."

Harvey D. Eaton, Attorney for Plaintiff. F. Harold Dubord, Attorney for Defendants.

Approved: J. A. P., U. S. D. J., 2 Sept., '36.

IN UNITED STATES DISTRICT COURT

OPINION OF THE COURT—Filed May 29, 1936

PETERS, D. J.:

This is a bill in equity brought to establish a priority claim on certain bonds or the proceeds thereof in the hands of the defendant Picher, as receiver of the defendant Peoples-Ticonic National Bank.

I find the following facts:

In March, 1931, the plaintiff, Lottie F. Sprague, deposited with the Ticonic National Bank of Waterville about $5,000 in trust to be invested by the bank as trustee and used for the purpose of making certain periodical payments to the other plaintiff, Margaret Davis Sprague. The bank had been authorized to act in a fiduciary capacity under the provisions of the Federal Reserve Act, and had, by proper votes, set up a trust department with adequate provisions for the protection of trust funds, including the provision that trust funds held by the bank awaiting investment or distribution, deposited in the commercial department of the [fol. 48] bank to the credit of the trust department, should be secured by securities equal in value to the amount of such deposited funds and delivered to the trust department to be held segregated from the general assets of the bank.

The bank accepted the Sprague trust, the terms of which were evidenced by a written memorandum, and deposited the money in its commercial or checking department to the credit of its trust department, with other funds awaiting investment or distribution, and secured the total amount of such funds by setting aside in the trust department bonds equal to or exceeding in value the amount of such total deposit, as provided by the by-laws of the bank and by the Federal Reserve Act. Included among the bonds thus segregated was a certain lot of $20,000 Kingdom of Denmark 6s, 1942.

In August, 1931, the Ticonic Bank discontinued its activities as an active banking concern, sold substantially all of its assets to the Peoples National Bank, and went into voluntary liquidation. The Peoples Bank agreed to assume and pay the liabilities of the Ticonic Bank to its depositors, but it does not appear that the Peoples Bank succeeded the old bank as trustee or expressly undertook any obligation

relative to the administration of its trusts. On the contrary, the old Ticonic Bank continued, through its officers, to exercise supervision over the trust accounts, including the Sprague account.

The total uninvested trust funds on deposit in the commercial department of the Ticonic Bank, when taken over by the Peoples Bank, amounted to about $10,000, and when the banks closed in 1933 to about $12,000. The sale to the Peoples Bank included the Ticonic banking house, furniture and equipment, and the new bank, taking the name of Peoples-Ticonic, occupied the quarters of the old Ticonic.

In 1931, prior to the acceptance of the Sprague trust by the Ticonic Bank, Mr. Charles W. Vigue, who was president and remained president of the Peoples Bank, was chosen president of the Ticonic and assumed active control and management of its affairs. Several other gentlemen were and remained directors of both banks, both of which were practically controlled by one stock ownership.

[fol. 49] The deposit in the Ticonic Bank to the credit of its trust department, after the sale to the Peoples Bank, was carried in the same way as before, even the same ledger sheets being used, it being impossible to distinguish, except by dates, the old account from the new.

The officers of the old Ticonic Bank, in handling this account of uninvested trust funds, continued to make deposits and draw checks as before. The checks, until the close of the banks in 1933, were even drawn on the Ticonic Bank by its trust officers and by Mr. Vigue, its president and trust officer, although the bank had gone out of business; but the checks were presented to and paid by the new bank in the old banking rooms. The Sprague account, which was never invested in any way by the Ticonic Bank as trustee, was thus finally drawn down to $3,649.65, which is the amount of the trust fund that should be in the hands of the trustee.

The Kingdom of Denmark bonds, which had been segregated by the Ticonic Bank to secure the uninvested trust funds on deposit in its commercial department to the credit of its trust department, were included in the sale of assets by the Ticonic to the Peoples Bank, delivered to and taken over by the latter bank. They were then treated by the new bank as its own property, segregated to secure its own trust funds as distinguished from the trust funds of the old bank, and subseqnently sold by the receiver.

As both banks had the same active president, who also participated as trust officer in the handling of the trust funds of the Ticonic Bank, both before and after the quasi consolidation, the officers of the Peoples-Ticonic Bank, which I have referred to as the new bank, had full knowledge of the situation concerning the trust funds of the old bank and the fact that the uninvested funds when turned over to the new bank were secured by these Kingdom of Denmark bonds.

Subsequent to the closing of the banks in 1933 the defendant Picher was appointed receiver of both banks.

Under the trust agreement with the plaintiffs, the Ticonic Bank as trustee was authorized to reserve $1,000 from invested funds and to deposit that amount in the savings department of the bank; but no such deposit was made, nor was any of the Sprague money ever invested, either [fol. 50] by deposit under the safeguards of the savings department or otherwise, but always remained among the uninvested trust funds.

In behalf of the defendants it is claimed that the deposit in the commercial or checking departments,—first, of the Ticonic and later of the Peoples-Ticonic, when that bank succeeded to the business of the Ticonic,—simply represented the obligation of debtor and creditor, and that the only rights of the persons interested in the deposit are to share in a distribution of general assets by the receiver; that the plaintiffs and others interested in the deposit are not entitled to a lien on the Denmark bonds or their proceeds, it being contended that while those bonds were segregated by the Ticonic for the purpose of securing uninvested funds, that the funds in question were not uninvested but were invested by depositing them in the commercial account of the Peoples-Ticonic Bank.

It is also contended that inasmuch as the trust agreement authorized the reservation of $1,000 from general investments and authorized its deposit in the savings department, that, in any event, $1,000 of the Sprague fund was a general deposit, regardless of the status of the balance.

My conclusions of law are not favorable to the defendants' contention. No doubt the banks,—first the Ticonic and then the Peoples-Ticonic,—were debtors for the amount of balances in their checking accounts to the credit of the trust department of the Ticonic. The owners of those bal-

ances had the benefit of the banks' implied promise to pay; but they also, admittedly, had the benefit of the security of the segregated bonds while the deposit was in the Ticonic, and must still have that benefit, unless something has happened since to deprive them of that protection. As nothing has occurred with their consent or participation it must be claimed, either that the so-called consolidation of the banks or the fact of receivership has changed their equitable rights.

The sale of these segregated bonds with the assets of the Ticonic to the Peoples, or the Peoples-Ticonic Bank, was not a sale to innocent third parties for value. The status of the bonds with reference to uninvested trust funds was perfectly well known to Mr. Vigue who was the chief executive officer of both banks and acted as trust officer of the [fol. 51] Ticonic. His knowledge affected the new bank as well as the old, and he could not by a mere sale of the bonds in the market divest himself or his bank of responsibility.

Under the situation disclosed the new bank took and held the trust deposit, with the bonds that had been set aside to secure it as provided by law, subject to the same obligations and with the same status as before.

The argument that when the funds were in the checking department of one bank they were uninvested and that when they turned up in the checking department of another bank they became invested funds, does not impress me. I hold that their status was not changed by the so-called consolidation.

The only other thing that has occurred is the receivership; but the receiver took over the assets of the closed bank subject to all the existing rights and equities. Scott v. Armstrong, 148 U. S., 499. In the above case the Court said:

"It is insisted that the assets of the bank existing at the time of the act of insolvency include all its property without regard to any existing liens or set-offs thereto. We do not regard this position as tenable. * * * Liens, equities or rights arising by express agreement or implied from the nature of the dealings between the parties or by operation of law prior to insolvency, and not in contemplation thereof, are not invalidated."

Scudd v. Tillinghast, 191 Fed. 1. In the latter case the Circuit Court of Appeals held that the receiver of a na-

tional bank cannot lawfully appropriate to the use of the bank or its creditors any seeming assets that in equity and good conscience belongs to another or ought not to be enforced against him. Whittnebel v. Loughman, 9 Fed. Supp. 465.

I conclude that the plaintiffs, in common with others in the same situation, had an equitable lien on the Denmark bonds while in the possession of the Peoples-Ticonic Bank and while in the possession of its receiver, and, as the proceeds of those bonds sold by the receiver augmented the funds in the hands of the receiver the same lien extends to the proceeds of the bonds. As the total amount of all trust funds on deposit was less than the proceeds of the [fol. 52] bonds sold, the plaintiffs here are entitled to payment in full of $3649.65 with interest from the date of the bill and with costs.

A decree may be entered accordingly.

In United States District Court

Final Decree—Filed June 6, 1936

This cause came on for hearing this day and was heard upon bill, answer, proofs and briefs and thereupon upon full consideration thereof it is ordered, adjudged and decreed

1. That plaintiffs' bill be sustained.

2. That defendant, Arthur G. Picher, Receiver of Peoples Ticonic Natl. Bank, pay to plaintiffs $3649.65 with interest from July 30, 1935.

3. That defendant, Arthur G. Picher, Receiver, pay plaintiffs their taxable costs, and that execution issue accordingly.

John A. Peters, Judge U. S. District Court.

June 2, 1936.

Seen and agreed to: ——, Attorney for defendants.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL

The petition for appeal is dated August 7, 1936, and was filed and allowed by Judge Peters on August 8, 1936. Appeal to act as supersedeas, no bond being required as appeal is taken by direction of Comptroller of the Currency.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed August 8, 1936

And now on this, the seventh day of August, A. D. 1936, came the defendants, by their solicitor, F. Harold Dubord, [fol. 53] of Waterville in the County of Kennebec and State of Maine, and say that the final decree entered in the above cause on the sixth day of June, A. D. 1936, is erroneous and unjust to the defendants:

1. Because the Court erred in finding that the relationship of trustee and cestui que trust existed between the Peoples-Ticonic National Bank and/or the Ticonic National Bank and the plaintiffs in relation to funds left by the plaintiff, Lottie F. Sprague, with the Ticonic National Bank.

2. Because the Court erred in failing to find that only a relationship of debtor and creditor existed between the plaintiffs and the defendant banks in relation to the funds left with the Ticonic National Bank by the plaintiff, Lottie F. Sprague.

3. Because the Court erred in its conclusion that the funds in question remained among the uninvested trust funds of the Ticonic National Bank.

4. Because the Court erred in its conclusion that the funds in question were secured by the Kingdom of Denmark bonds previously segregated by the Ticonic National Bank to secure the uninvested trust funds of the Ticonic National Bank,

5. Because the Court erred in its conclusion that the sum of three thousand six hundred forty-nine dollars sixty-five ($3649.65) cents was secured by the Kingdom of Denmark

bonds sold by the Ticonic National Bank to the Peoples-Ticonic National Bank.

6. Because the Court erred in its conclusion that the plaintiffs are entitled to interest from July 30, 1935.

7. Because the Court erred in its finding that the defendant, Arthur G. Picher, Receiver of both banks, should pay to the plaintiffs the sum of $3649.65.

8. Because the finding of the Court is entirely unwarranted by the evidence.

9. Because the Court erred in failing to give consideration to the legal requirements necessary for the establishment of a priority against the Receiver of an insolvent national bank.

[fol. 54] 10. Because the Court exceeded its powers in relation to the form and substance of the decree.

11. Because the Court erred in entering a decree to the effect that the plaintiffs recover their costs to be taxed by the Clerk for which execution may issue.

12. Because the decree is against the law and the evidence in the case.

13. Because the Court erred in its conclusion that the plaintiffs were entitled to an equitable lien on the Kingdom of Denmark bonds while in the possession of the Peoples-Ticonic National Bank and while in the possession of its Receiver.

14. Because the Court erred in its conclusion that the plaintiffs were entitled to priority in the special fund of one thousand ($1,000) dollars.

Wherefore the defendants pray that said decree be reversed and the Circuit Court of Appeals directed to dismiss the bill.

F. Harold Dubord, Solicitor for Defendants.

F. Harold Dubord, Waterville, Maine.

IN UNITED STATES DISTRICT COURT

BOND ON APPEAL

The appeal is allowed without requirement of security, in accordance with Section 870 of Title 28, of the Code of Laws of the United States.

CITATION ON APPEAL

The Citation is dated August 8, 1936. Service thereof was made August 21, 1936.

[fol. 55] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR RECORD—Filed August 11, 1936

To the Clerk of the United States District Court, District of Maine, Federal Building, Portland, Maine.

SIR:

In preparing the transcript of record in the above entitled cause for transmission to the United States Circuit Court of Appeals for the First Circuit, please include:

1. Bill of complaint filed in Southern Division of United States District Court for the District of Maine.
2. Answer of defendants.
3. Statement of evidence.
4. Plaintiffs' exhibits A and B.
5. Defendants' exhibits 1-5 inclusive.

5a. Stipulation in regard to Plaintiffs' exhibit B and Defendants' exhibits 2 and 3.

6. Opinion of his Honor, Judge John A. Peters, handed down May 29, 1936.
7. The final decree sustaining the bill of complaint entered June 6, 1936.
8. The petition for appeal.
9. Assignment of errors.
10. Order allowing appeal.
11. Citation in appeal with return of service thereon.

12. Copy of this præcipe.
13. Clerk's certificate.

Respectfully, F. Harold Dubord, Solicitor for Defendants.

Copy of the above præcipe received August 10, 1936.
Harvey D. Eaton, Solicitor for Plaintiffs.

Agreed to:
Harvey D. Eaton, Solicitor for Plaintiffs.

[fol. 56] Clerk's certificate to foregoing transcript omitted in printing.

[Memorandum.—An order of enlargement of time for docketing case to, and including, October 17, 1936, is here omitted. A. I. Charron, Clerk.]

[fol. 57] In United States Circuit Court of Appeals for the First Circuit, October Term, 1936

No. 3192

Ticonic National Bank et al., Defendants, Appellants,

v.

Lottie F. Sprague et al., Plaintiffs, Appellees

Appeal from the District Court of the United States for the District of Maine

Before Bingham, Wilson and Morton, JJ.

Opinion of the Court, on Rehearing—June 1, 1937

Bingham, J.:

This is an appeal from a decree of the federal District Court for Maine sustaining the plaintiffs' bill in equity and ordering the defendant Pitcher, the receiver of the Peoples National Bank, to pay to the plaintiffs the sum of $3649.65,

with interest from July 30, 1935, the date of the bill of complaint, with costs.

The bill was brought by Lottie F. Sprague and her daughter, Margaret Davis Sprague, against the Ticonic National Bank, the Peoples National Bank, and Arthur D. Pitcher, receiver of both banks, to establish the validity of a trust agreement dated March 28, 1931, entered into between the plaintiff Lottie F. Sprague and the Ticonic National Bank as trustee, and to assert a lien upon certain Kingdom of Denmark bonds aggregating $20,000, held as security for the performance of the trust agreement.

[fol. 58] From an early day there had existed in Waterville, Maine, two national banks, one known as the Ticonic National Bank, and the other as the Peoples National Bank. In December, 1926, the Federal Reserve Board authorized the Ticonic Bank to act in a fiduciary or trust capacity as provided in Title XII, U. S. C., Section 248 k, and on that day the directors of the Ticonic Bank established a trust department and adopted by-laws for its management, by which they established adequate provisions for the protection of trust funds, including the provision that trust funds held by the bank and "awaiting investment or distribution" if deposited in the commercial department of the bank to the credit of the trust department, the bank "should first deliver to the trust department, as collateral security, United States bonds or other marketable securities owned by the bank, * * * at least equal in market value to the amount of the funds deposited," and also as required by Section 248 k.

On March 28, 1931, the plaintiff, Lottie F. Sprague, delivered to the trust department of the Ticonic Bank $5022.18 to establish a trust fund for the benefit of her daughter Margaret under a written agreement setting forth the terms of the trust. By its terms, the trustee was authorized to invest the money in such "*bonds or securities*" as in its discretion it might determine, and to deposit in its savings department out of said sum at least $1000. And the trustee agreed to collect the income, interest and dividends, and on the first banking day of each month, beginning April 1, 1931, pay to the daughter Margaret the sum of fifty dollars from the fund and accumulations until the sum and accumulations were exhausted, etc. The Ticonic Bank accepted the trust and deposited the money in its commercial checking department to the credit of its trust department, with

other trust funds awaiting investment or distribution, and secured the total amount of such funds by setting aside in the trust department bonds equal to or exceeding in value the amount of such total deposits, as provided by the by-laws of the bank and the Federal Reserve Act. Included among the bonds thus segregated was a certain lot of $20,000 Kingdom of Denmark 6s, 1942.

[fol. 59] August 3, 1931, the Ticonic Bank ceased to do business as an active banking concern, sold substantially all of its assets to the Peoples National Bank, and went into voluntary liquidation. In the agreement of sale, the Peoples Bank assumed and agreed to pay the liabilities of the Ticonic Bank to its depositors, but it does not appear that the Peoples Bank succeeded the Ticonic Bank as trustee or expressly undertook the administration of the latter's trusts. The evidence showed that the Ticonic Bank, through its officers, continued to exercise supervision over the trust accounts, including the Sprague account. But that, early in 1931, prior to the acceptance of the Sprague trust by the Ticonic Bank, Mr. Charles W. Vigue, who was president and remained president of the Peoples Bank, had become president and director of the Ticonic Bank and an officer of its trust department; that he assumed active management and control of the latter bank's affairs; that several other gentlemen were and remained directors of both banks; and that both banks were practically controlled by one stock ownership.

After the sale of the assets of the Ticonic Bank to the Peoples Bank, the deposits in the commercial account of the Ticonic Bank, to the credit of its trust department, were carried on the books of the Ticonic Bank in the same way as before, but the funds ($10,127.66) were deposited in the commercial account of the Peoples Bank, and the officers of the Ticonic, in handling this account of the uninvested trust funds, continued to make deposits and draw checks as before. Even down to the close of the banks in 1933, the president and trust officers of the Ticonic Bank drew checks on that bank although it had gone out of business; the checks, however, were presented to and paid by the Peoples Bank in the old banking rooms of the Ticonic which the Peoples Bank had taken over. The Peoples National Bank and the Peoples-Ticonic National Bank are the same thing—a mere change of name.

The Sprague account, which was never invested in any way by the Ticonic Bank as Trustee, was finally drawn down to $3649.65, which is the amount of the trust fund that should be in the hands of the trustee. None of the uninvested trust [fol. 60] funds, either of the Sprague trust or the other trust was on deposit in the Peoples Bank (then called Peoples-Ticonic) to the credit of the trust department of the Ticonic Bank at the time the banks were taken over by the receiver.

The Kingdom of Denmark bonds, which had been segregated by the Ticonic Bank to secure its uninvested trust funds, were included in the sale of assets by the Ticonic Bank to the Peoples Bank, and delivered to and taken over by it. The bonds were treated by the Peoples Bank as its own property. It set them apart to secure its own trust funds as distinguished from the trust funds of the Ticonic Bank, and they were subsequently sold by the receiver for $20,722.66, which fund is now held by him.

It is also found that, as both of the banks had the same active president, who also participated as trust officer in the handling of the trust funds of the Ticonic Bank, both before and after the quasi-consolidation, the officers of the Peoples or Peoples-Ticonic Bank had full knowledge of the situation concerning the trust funds of the Ticonic and that its uninvested trust funds, at the time and before they were turned over to the Peoples, were secured by the Kingdom of Denmark bonds; that, although the Ticonic Bank, as trustee, was authorized to reserve $1000 from the trust fund and to deposit that amount in its savings department, no such deposit was made; that none of the Sprague money was ever invested, either by deposit under the safeguards of the savings department, or otherwise, but always remained among the uninvested trust funds; that the banks were closed March 4, 1933, and Mr. Pitcher was later appointed receiver of both banks.

The evidence also tends to show that the amount derived from the sale of the Kingdom of Denmark bonds by the receiver is sufficient to pay all the trust moneys deposited in the trust department of the Ticonic Bank at the time the banks were taken over by the receiver, together with interest from that date.

The above statement embodies the facts as found by the District Court and approved or found by this court.

The plaintiffs are not here seeking to establish a claim as general creditors against the assets of either of the two

[fol. 61] banks that came into the hands of the receiver in trust for general creditors. What they are seeking to do is to establish a trust agreement with the Ticonic Bank under which a fund was deposited by the plaintiffs in the trust department of that bank, which fund it never invested and no part of which was deposited in its savings department, but all put into its commercial account and used in its general banking business; and assert a lien upon the bonds pledged as security therefor.

Under the terms of its by-laws and Section 248 k, if the Ticonic Bank deposited the trust fund in its commercial account for use in the conduct of its general business, it was required to "first set aside in * * * [its] trust department United States bonds or other securities approved by the Board of Governors in the Federal Reserve System," and, in the event of the bank's failure, the owners of such fund by Section 248 k were given "a lien on the bonds or other securities so set apart, in addition to their claims against the estate of the bank." And, inasmuch as the plaintiffs' trust deposits were never invested by the Ticonic Bank and no part of them was deposited in the savings department, but were used by it in the conduct of its business, the plaintiffs acquired a lien on the bonds segregated to secure the deposit, in addition to any claim they might have as general creditors against the estate of the bank held by the receiver.

The plaintiffs did not lose their lien on the bonds by virtue of the attempted sale of them by the Ticonic to the Peoples Bank, for the Peoples Bank knew that the bonds had been segregated to secure the payment of uninvested trust deposits and took them charged with a trust or lien to secure those deposits. The trust deposits were never invested by the Ticonic Bank within the terms of the trust agreement. Their later deposit on or about August 3, 1931, in the commercial account of the Peoples Bank was not such an investment and the lien on the segregated securities was never in any way discharged. The receiver acquired no greater rights in the Kingdom of Denmark bonds than the Peoples Bank had by its colorable purchase of them from the Ticonic. And the bonds, having been [fol. 62] segregated in the latter's trust department to meet the requirements of Section 248 k and its own by-laws, the Peoples Bank and the receiver took them charged with the trust as above stated. Burrowes v. Nimocks, 35 Fed. (2d)

152, at 159; Schumacher v. Eastern Bank & Trust Co., 52 Fed. (2d) 925, at 928-929.

The receiver sold the bonds for $20,722.66, which sum he now holds apart from the general assets of the banks. That sum is nearly twice the amount of the trust deposits of all the depositors, including the plaintiffs', and undoubtedly more than sufficient to pay the claims of all the depositors with interest. Consequently we see no reason why the plaintiffs should not recover the amount due at the time the bank was taken over by the receiver, with interest and costs as allowed by the District Court.

In saying this we are aware that if the plaintiffs were seeking to establish a claim against the general funds of an insolvent national bank, they could not be allowed interest after the bank was taken over by the receiver, as the requirement of a ratable distribution precludes, in such case, the recovery of interest. But this is not such a case. The funds out of which the plaintiffs and other similarly situated claim payment are trust funds set apart from the general assets of the banks and in which the general creditors have no rights until after the secured claims are paid.

Our prior order in this case of January 15, 1937, is vacated and the order is:

The decree of the District Court is affirmed with costs.

[fol. 63] IN UNITED STATES CIRCUIT COURT OF APPEALS

RECITAL AS TO HEARING

On January 6, 1937, this cause came on to be heard and was fully heard by the court, Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on January 15, 1937, the following Per Curiam was filed:

IN UNITED STATES CIRCUIT COURT OF APPEALS

PER CURIAM—January 15, 1937

We are of the opinion that the decree of the District Court is correct except so far as it allows interest; that in allowing

interest from July 30, 1935 (the date of the bringing of the bill of complaint) the court erred.

The decree of the District Court is modified by striking therefrom the words "with interest from July 30, 1935", and so modified is affirmed, with costs to the appellees in this court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—January 15, 1937

This cause came on to be heard January 6, 1937, upon the transcript of record of the District Court of the United States for the District of Maine, and was argued by counsel.

Upon consideration whereof, It is now, to wit, January 15, 1937, here ordered, adjudged and decreed as follows: The decree of the District Court is modified by striking therefrom the words "with interest from July 30, 1935", and so modified is affirmed, with costs to the appellees.

By the Court.

Arthur I. Charron, Clerk.

IN UNITED STATES CIRCUIT COURT OF APPEALS

RECITAL AS TO PETITIONS FOR REHEARING, ETC.

Thereafter, to wit, on April 5, 1937, upon petitions for rehearing filed by both parties, mandate which issued to the District Court on February 15, 1937, was recalled and an order entered for reargument.

Thereafter, to wit, on April 23, 1937, this cause came on to be heard on reargument and was fully heard by the court, [fol. 64] Honorable George H. Bingham, Honorable Scott Wilson and Honorable James M. Morton, Jr., Circuit Judges, sitting.

Thereafter, to wit, on June 1, 1937, an order vacating the final decree of January 15, 1937, was entered, the opinion of the court on rehearing (page 57) was filed and the following Final Decree was entered:

IN UNITED STATES CIRCUIT COURT OF APPEALS

FINAL DECREE—June 1, 1937

This cause came on to be heard January 6, 1937, and April 23, 1937, upon the transcript of record of the District Court of the United States for the District of Maine, and was argued by counsel.

Upon consideration whereof, It is now, to wit, June 1, 1937, here ordered, adjudged and decreed as follows: The decree of the District Court is affirmed with costs.

By the Court.

Arthur I. Charron, Clerk.

RECITAL AS TO STAY OF MANDATE

Thereafter, to wit, on June 29, 1937, upon motion of appellants, mandate was stayed until further order of court.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 65] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 18, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the First Circuit is granted, limited to the question as to the allowance of interest.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,855. U. S. Circuit Court of Appeals, First Circuit. Term No. 374. Ticonic National Bank, Peoples-Ticonic National Bank, et al., petitioners, vs. Lottie F. Sprague and Margaret Davis Sprague. Petition for writ of certiorari and exhibit thereto. Filed September 1, 1937. Term No. 374, O. T., 1937.